

UNITED STATES OF AMERICA
Before The
OFFICE OF THRIFT SUPERVISION

In the Matter of:)

Tracy A. Tyner,)

Former Employee and)
Institution-Affiliated Party)
of:)

Commercial Federal Bank,)
A Federal Savings Bank)
Omaha, Nebraska)

RE: OTS Order No. MWR-97-06

Dated: April 28, 1997

STIPULATION AND CONSENT TO ENTRY
OF AN ORDER OF PROHIBITION AND ORDER TO
CEASE AND DESIST FOR AFFIRMATIVE RELIEF

WHEREAS, the Office of Thrift Supervision ("OTS"), based upon information derived from the exercise of its regulatory responsibilities, has informed Tracy A. Tyner ("TYNER"), former employee and institution-affiliated party of Commercial Federal Bank, A Federal Savings Bank, Omaha, Nebraska, OTS No. 5198 ("Commercial Federal Bank" or the "Institution") that the OTS is of the opinion that grounds exist to initiate administrative cease and desist and prohibition proceedings against TYNER pursuant to Sections 8(b) and 8(e) of the Federal Deposit Insurance Act ("FDIA"), 12 U.S.C. § 1818(b) and 12 U.S.C. § 1818(e).¹

WHEREAS, TYNER desires to cooperate with the OTS to avoid the

1. All references in this Stipulation and Consent and the Orders are to the U.S.C. as amended.

time and expense of such administrative litigation and, without admitting or denying that such grounds exist, but admitting the statements and conclusions in Paragraph 1 below, hereby stipulates and agrees to the following terms:

1. Jurisdiction.

(a) **Commercial Federal Bank**, at all times relevant hereto, was a "savings association" within the meaning of Section 3(b) of the FDIA, 12 U.S.C. § 1813(b), and Section 2(4) of the Home Owners' Loan Act ("HOLA"), 12 U.S.C. § 1462(4). Accordingly, **Commercial Federal Bank** was an "insured depository institution" as that term is defined in Section 3(c) of the FDIA, 12 U.S.C. § 1813(c).

(b) **TYNER**, as a former employee of **Commercial Federal Bank**, is deemed to be an "institution-affiliated party" as that term is defined in Section 3(u) of the FDIA, 12 U.S.C. § 1813(u), having served in such capacity within six (6) years of the date hereof (see 12 U.S.C. § 1818(i)(3)).

(c) Pursuant to Section 3(q) of the FDIA, 12 U.S.C. § 1813(q), the OTS is the "appropriate Federal banking agency" with jurisdiction to maintain an enforcement proceeding against institution-affiliated parties. Therefore, **TYNER** is subject to the authority of the OTS to initiate and maintain cease and desist and prohibition proceedings against her pursuant to Section 8(b) of the FDIA, 12 U.S.C. § 1818(b) and Section 8(e) of the FDIA, 12 U.S.C. § 1818(e).

2. OTS Findings of Fact. The OTS finds that on various dates ending on or about January 28, 1997, **TYNER**, without authorization,

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misapplied \$40,556.00 of the funds of Commercial Federal Bank to her own use. As a result of her actions, TYNER (1) engaged in a violation of the law or breached her fiduciary duty of honesty to Commercial Federal Bank; and (2) Commercial Federal Bank suffered a financial loss or she received a financial benefit or other gain; and (3) the violation of law or breach of fiduciary duty demonstrates willful and/or continuing disregard by TYNER for the safety and soundness of Commercial Federal Bank.

3. Consent. TYNER consents to the issuance by the OTS of the accompanying Order of Prohibition and Order to Cease and Desist for Affirmative Relief ("Orders"). She further agrees to comply with their terms upon issuance and stipulates that the Orders comply with all requirements of law.

4. Finality. The Orders are issued by the OTS under the authority of Section 8(b) of the FDIA, 12 U.S.C. §1818(b) and Section 8(e) of the FDIA, 12 U.S.C. §1818(e). Upon their issuance by the Regional Director or designee for the Midwest Region, OTS, they shall be final orders, effective and fully enforceable by the OTS under the provisions of Section 8(i) of the FDIA, 12 U.S.C. § 1818(i).

5. Waivers. TYNER waives the following:

- (a) the right to be served with a written notice of the OTS's charges against her (see Sections 8(b) and 8(e) of the FDIA);
- (b) the right to an administrative hearing of the OTS's charges against her (see Sections 8(b) and 8(e) of the FDIA); and
- (c) the right to seek judicial review of the Order,

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including, without limitation, any such right provided by Section 8(h) of the FDIA, 12 U.S.C. §1818(h), or otherwise to challenge the validity of the Order.

6. Indemnification. TYNER shall neither cause nor permit Commercial Federal Bank (or any successor institution, holding company, subsidiary, or service corporation thereof) to incur, directly or indirectly, any expense for any legal or other professional expenses incurred relative to the negotiation and issuance of the Order of Prohibition and Order to Cease and Desist for Affirmative Relief. Nor shall TYNER obtain any indemnification (or other reimbursement) from the Institution (or any successor institution, holding company, subsidiary, or service corporation thereof) with respect to such amounts. Any such payments received by or on behalf of TYNER in connection with this action shall be returned to Commercial Federal Bank (or the successor institution, holding company, subsidiary, or service corporation thereof).

7. Other Government Actions Not Affected.

(a) TYNER acknowledges and agrees that the consent to the entry of the Orders is for the purpose of resolving these cease and desist and prohibition actions only, and does not release, discharge, compromise, settle, dismiss, resolve, or in any way affect any actions, charges against, or liability of TYNER that arise pursuant to these actions or otherwise, and that may be or have been brought by any other government entity other than the OTS.

(b) By signing this Stipulation and Consent to Entry of an

Order of Prohibition and Order to Cease and Desist for Affirmative Relief, TYNER agrees that she will not assert this proceeding, her consent to the entry of the Orders, and/or the entry of the Orders, as the basis for a claim of double jeopardy in any pending or future proceeding brought by the United States Department of Justice or any other Federal or state governmental entity.

(c) In any bankruptcy proceeding in which it is or may be contended that TYNER's obligation to pay restitution pursuant to the Orders is subject to discharge, TYNER will in no manner contest OTS's assertions, pursuant to 11 U.S.C. 523(a)(11) or otherwise, that the restitution obligation in the Orders arises out of acts that result in claims not dischargeable in bankruptcy.

8. Acknowledgment of Criminal Sanctions. TYNER acknowledges that Section 8(j) of the FDIA, 12 U.S.C. §1818(j), sets forth criminal penalties for knowing violations of the Order.

9. Agreement for Continuing Cooperation. TYNER agrees that, at the OTS's request, on reasonable notice and without service of a subpoena, she will provide discovery and testify truthfully at any deposition and at any judicial or administrative proceeding related to any investigation, litigation, or other proceeding maintained by the OTS relating to **Commercial Federal Bank**, its holding companies, its subsidiaries, and its institution-affiliated parties, except that TYNER does not waive any privilege against self-incrimination under the Fifth Amendment of the United States Constitution. If TYNER invokes a privilege against self-incrimination under the Fifth Amendment of the United States Constitution with respect to

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any matter about which the OTS inquires or the production of any document requested by the OTS and the OTS obtains a grant of immunity pursuant to 18 U.S.C. § 6001 et seq., **TYNER** agrees, consistent with any such grant of immunity, to provide discovery and testify truthfully at any deposition and at any judicial, administrative, or investigative proceeding on the matter for which immunity is given.

WHEREFORE, TYNER executes this Stipulation and Consent to Entry of an Order of Prohibition and Order to Cease and Desist for Affirmative Relief, intending to be legally bound hereby.

By:

Accepted By:
Office of Thrift Supervision

Tracy A. Tyner
Tracy A. Tyner

Frederick R. Casteel
Frederick R. Casteel
Midwest Regional Director

Dated: 4-21-97

Dated: 4-28-97

* * * * *

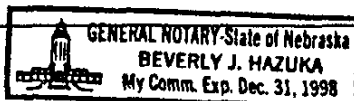
ACKNOWLEDGMENT

State of Nebraska)
County of Lincoln)

On this 21 day of April, 1997, before me, the undersigned notary public, personally appeared Tracy A. Tyner and acknowledged her execution of the foregoing STIPULATION AND CONSENT TO ENTRY OF AN ORDER OF PROHIBITION AND CEASE AND DESIST ORDER FOR AFFIRMATIVE RELIEF

Beverly J. Hazuka
Notary Public

My Commission expires:



UNITED STATES OF AMERICA
Before The
OFFICE OF THRIFT SUPERVISION

In the Matter of:)
)
Tracy A. Tyner,)
)
Former Employee and)
Institution-Affiliated Party)
of:)
)
Commercial Federal Bank,)
A Federal Savings Bank)
Omaha, Nebraska)

RE: OTS Order No. MWR-97-06

Dated: April 28, 1997

ORDER OF PROHIBITION
AND
ORDER TO CEASE AND DESIST FOR AFFIRMATIVE RELIEF

WHEREAS, Tracy A. Tyner ("TYNER") has executed a Stipulation and Consent to Entry of an Order of Prohibition and Order to Cease and Desist for Affirmative Relief ("Stipulation"); and

WHEREAS, TYNER, by her execution of the Stipulation, has consented and agreed to the issuance of this Order of Prohibition and Order to Cease and Desist for Affirmative Relief ("Orders") by the Office of Thrift Supervision ("OTS"), pursuant to Section 8(e) of the Federal Deposit Insurance Act ("FDIA"), 12 U.S.C. §1818(e) and Section 8(b) of the FDIA, 12 U.S.C. §1818(b).

NOW THEREFORE, IT IS ORDERED that:

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ORDER OF PROHIBITION

1. **TYNER** is prohibited from further participation, in any manner, in the conduct of the affairs of Commercial Federal Bank, A Federal Savings Bank, Omaha, Nebraska, and any successor institution, holding company, subsidiary, and/or service corporation thereof.

2. **TYNER** is and shall be subject to the statutory prohibitions provided by Section 8(e) of the FDIA, 12 U.S.C. § 1818(e). Due to and without limitation on the operation of Sections 8(e)(6) and 8(e)(7) of the FDIA, 12 U.S.C. §§ 1818(e)(6) and 1818(e)(7), **TYNER**, except upon the prior written consent of the OTS (acting through its Director or an authorized representative thereof) and any other "appropriate Federal financial institutions regulatory agency," for purposes of Section 8(e)(7)(B)(ii) of the FDIA, 12 U.S.C. § 1818(e)(7)(B)(ii), shall not:

(A) hold any office in, or participate in any manner in the conduct of the affairs of, any institution or any agency specified in Section 8(e)(7)(A) of the FDIA, 12 U.S.C. § 1818(e)(7)(A) ("Covered Institution"), including:

(i) any insured depository institution, e.g., savings and loan associations, savings banks, national banks, state banks, trust companies, and other banking institutions;

(ii) any institution treated as an insured bank under Sections 8(b)(3) and 8(b)(4) of the FDIA, 12 U.S.C. §§ 1818(b)(3) and 1818(b)(4), or as a savings association under Section 8(b)(9)

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of the FDIA, 12 U.S.C. § 1818(b)(9), e.g., subsidiaries and holding companies of banks or savings associations;

(iii) any insured credit union under the Federal Credit Union Act, 12 U.S.C. §§ 1781 et seq.;

(iv) any institution chartered under the Farm Credit Act of 1971, 12 U.S.C. §§ 2001 et seq.;

(v) any appropriate Federal depository institution regulatory agency, within the meaning of 12 U.S.C. § 1818(e)(7)(A)(v); and

(vi) the Federal Housing Finance Board and any Federal Home Loan Bank;

(B) solicit, procure, transfer, attempt to transfer, vote or attempt to vote any proxy, consent, or authorization with respect to any voting rights in any Covered Institution;

(C) violate any voting agreement previously approved by the "appropriate Federal banking agency" within the meaning of Section 3(q) of the FDIA, 12 U.S.C. §§ 1813(q); or

(D) vote for a director, or serve or act as an "institution-affiliated party," as that term is defined at Section 3(u) of the FDIA, 12 U.S.C. § 1813(u), e.g., a director, officer, employee, controlling stockholder of, or agent for, an insured depository institution.

3. The Stipulation is made a part hereof and is incorporated herein by this reference.

4. This Order is subject to the provisions of Section 8(j) of the FDIA, 12 U.S.C. § 1818(j), and shall become effective on the date it is issued.

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5. TYNER shall promptly respond to any request from the OTS for documents that the OTS reasonably requests to demonstrate compliance with this Order.

6. The terms and provisions of this Order shall be binding upon, and inure to the benefit of, the parties hereto and their successors in interest.

IT IS FURTHER ORDERED that:

ORDER TO CEASE AND DESIST FOR AFFIRMATIVE RELIEF

7. TYNER is and shall be subject to the statutory requirements provided by Section 8(b) of the FDIA, 12 U.S.C. § 1818(b).

8. TYNER shall make payment of restitution to Commercial Federal Bank, A Federal Savings Bank, Omaha, Nebraska, in the amount of \$40,556.00 in accordance with the terms of a Promissory Note, dated March 4, 1997, payable by TYNER to Commercial Federal Bank. The Promissory Note is and shall be incorporated herein by reference and, in addition to any other remedies, shall be enforceable by the OTS as a term of this Order as though fully set forth in this Order.

9. All payments should be made directly to Commercial Federal Bank.

10. The Stipulation is made a part hereof and is incorporated

herein by this reference.

11. This Order is subject to the provisions of Section 8(j) of the FDIA, 12 U.S.C. §1818(j), and shall become effective on the date it is issued.

12. TYNER shall promptly respond to any request from the OTS for documents that the OTS reasonably requests to demonstrate compliance with this Order.

13. The terms and provisions of this Order shall be binding upon, and inure to the benefit of, the parties hereto and their successors in interest.

THE OFFICE OF THRIFT SUPERVISION

By:



Frederick R. Casteel
Midwest Regional Director

PROMISSORY NOTE

\$40,556.00

Date: 3/4/97

For value received, and pursuant to an agreement to refund money improperly taken from Commercial Federal Bank while she was working at Commercial Federal Bank, Tracy Tyner ("Maker") whose address is 11667 QUAIL DR. OMAHA, NE 68143 promises to pay Commercial Federal Bank, A Federal Savings Bank whose address is 2120 South 72nd Street, Omaha, Nebraska 68124 ("Holder"), at the aforesaid address, or at any other place designated by holder, the sum of Forty thousand five hundred fifty six dollars and no cents (\$40,556.00), plus interest at the rate of 8.5% per year, to be paid in periodic payments as set forth below. Said payments will continue at a minimum amount \$ 300.00 per month commencing on 05/01/97 1997, and every month thereafter until the balance listed above in this Promissory Note shall be paid in full.

The undersigned maker shall have the right to prepay without penalty any and all of the sums due under this Promissory Note. If any payment is not made when due, the full amount of this Promissory Note shall become due and payable immediately and maker waives any all presentment, demand for payment, notice of dishonor, notice of protest or other defenses concerning this Promissory Note.

Tracy Tyner
Tracy Tyner (Maker)

STATE OF NEBRASKA]
]
COUNTY OF DOUGLAS]

Before me a Notary Public for said county and state, personally appeared Tracy Tyner, known by me to be the person who signed the foregoing instrument as her voluntary act and deed.

Billie A. Hawes
Notary Public

My commission expires: 4/9/1998

